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June 10, 2005

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

Federal Communications Commission
Office of Secretary

Re: Notice of Oral *Ex Parte* Presentations – Request for
Expedited Declaratory Ruling (MB Docket No. 04-75)

Dear Ms. Dortch:

On June 8, 2005, the undersigned, counsel to Max Media of Montana LLC ("Max Media"), and Erwin G. Krasnow, Esq., Garvey Schubert Barer, counsel to Destiny Licenses, LLC ("Destiny"), met with the staff of the Media Bureau, including Messrs. Roy J. Stewart, Senior Deputy Bureau Chief; William H. Johnson, Deputy Bureau Chief; Robert H. Ratcliffe, Deputy Bureau Chief; John B. Norton, Deputy Chief of the Policy Division; and Ms. Jane Gross regarding the Request for Expedited Declaratory Ruling filed on February 25, 2004 (Public Notice DA 04-747, March 19, 2004).

The representatives of Max Media and Destiny reiterated the positions set forth in their pleadings in this proceeding and countered the argument that if low-power television station ("LPTV") KBGF-LP, Great Falls, Montana, carries NBC programming, the issue of a network territorial exclusivity rule violation would be moot. The STA recently granted to Beartooth Communications to operate KBGF-TV at reduced facilities (File No. BSTA-20050513ADP) on a co-located basis with one of KTVH's translators (Channel 51), only *sharpens* the reasons for not equating KBGF-LP with KTGF(TV) for the purposes of Section 73.658(b). In addition, the KTVH translator is not a broadcast station licensed to the community of Great Falls for purposes of the network territorial exclusivity rule. It is an extension of KTVH, Helena, Montana.

Under these circumstances, KBGF-LP should not be considered a "broadcast station" in the Great Falls community sufficient to bring this case within the scope of the *Scripps Howard* precedent (see Letter to Eugene F. Mullin and Nathaniel F. Emmons, 10 FCC Rcd 4416, 78 RR 2d 88 (1995)). In a previous *ex parte* submission, Max Media and Destiny distinguished the case where the network organization is switching affiliations among stations licensed to the same community, *i.e.*, the *Scripps Howard* precedent, from this case where a station has tried to cure its violation of the network territorial exclusivity rule with an eleventh-hour acquisition of a low-power television station in the protected community, *i.e.*, Great Falls, Montana. See Letter to FCC Secretary dated June 3, 2005.

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The representatives of Max Media and Destiny argued that the public record of this proceeding has been open for more than one year. During that time, no party, including Sunbelt and NBC, has adduced any objective evidence, documentary or testamentary in nature, to substantiate the naked and self-serving assertion that NBC exercised independent business judgment in its 1999 decision to terminate its affiliation with station KTGF(TV). Furthermore, there appears to be no legitimate basis for NBC to abandon broadcast distribution of its signal in the community of Great Falls rather than maintaining an established NBC affiliate, KTGF(TV). If the cost of the affiliation were an issue, one would reasonably expect NBC to negotiate with the affiliate over network compensation. No such negotiations have occurred.

NBC cannot legitimately claim that it can achieve comparable distribution of its programming by other means. NBC simply cannot replicate the coverage of KTGF(TV), complete with local programming, even if it relies on program delivery to Great Falls via a combination of KBGF-LP, cable systems, and satellite service. Local news programming is a major factor in determining the viewership of prime-time network programming. The absence of local news would diminish the value of network program distribution to any local market.

By replacing KTGF(TV) with KBGF-LP for over-the-air delivery of NBC programming, NBC would lose broadcast coverage to more than an estimated 16,338 over-the-air viewers. In addition, substantial number of the viewers without broadcast reception would be in rural portions of Great Falls, where cable systems reach fewer homes. Therefore, only a fraction of those viewers losing free over-the-air service will actually be able to turn to cable for local NBC programming. DMA-wide cable penetration in Great Falls is only 56% (Nielsen, February 2005), far below the national average. Finally, with respect to NBC's reach via satellite, it is important to note that DBS penetration in the Great Falls DMA is only 30 % (Nielsen, February 2005), and neither DirecTV nor EchoStar offer local-into-local service in Great Falls. Thus, former KTGF(TV) viewers forced to rely on cable or DBS would be receiving out-of-market NBC programming without local news and local programming.

Finally, Destiny's attempts to renew the affiliation for KTGF(TV) after Destiny consummated the acquisition resulted in statements from NBC officials wholly inconsistent with a picture of NBC exercising independent business judgment. To supplement the record of this proceeding on this point, attached is a Supplemental Declaration of Darnell Washington, in which he explains what he was told by NBC officials when he inquired about the possibility of renewing KTGF(TV)'s network affiliation agreement. The relationship between NBC and Sunbelt appears to be the driving force behind NBC's business judgment. Accordingly, NBC's business judgment was not independent.

The representatives of Max Media and Destiny advocated the issuance of an Order to Show Cause why the licenses of all six stations under common ownership by Sunbelt that were mentioned or referred to in the 1999 letter from NBC to James Rogers should not be revoked for the violation of the Section 73.658(b) of the Commission's rules. Pursuant to Section 1.1206(b) of the



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Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Messrs. Stewart, Johnson, Ratcliffe, Norton and Ms. Gross. In addition, a copy of this letter, with attachment, has been served on all parties of record to this proceeding.

Respectfully submitted,



Julian L. Shepard

Attachment

cc: Roy H. Stewart
William H. Johnson
Robert H. Ratcliffe
John B. Norton
Jane Gross

DECLARATION OF DARNELL WASHINGTON

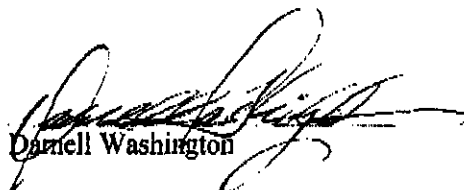
Under penalty of perjury, I, Darnell Washington, hereby declare that:

1. I am the President of Destiny Communications, LLC. ("Destiny") the parent entity of the licensee of KTGF(TV), Great Falls, Montana. I have personal knowledge of the following facts, except where noted.

2. On February 23, 2005, I met with John Damiano, Executive Vice President of Affiliate Relations for NBC Universal, Inc ("NBC") at NBC's corporate headquarters, located at 30 Rockefeller Plaza, New York, New York. We met to discuss the status of KTGF(TV)'s affiliation with NBC. I explained the strengths of Destiny as a new affiliate, and asked what Destiny could do to secure the renewal of KTGF(TV)'s affiliation. Mr. Damiano stated that "we would love to work with you on other NBC stations." He further explained that, because of a "personal relationship between Jim Rogers and Bob Wright, there is no chance of turning it around." Thus, it became obvious to me that the decision to terminate KTGF(TV)'s affiliation was not independent of the personal relationship between the Jim Rogers and Bob Wright.

3. My understanding was further confirmed on March 30, 2005, when I approached Bob Wright during a break at an NBC affiliates meeting in New York, New York. I introduced myself to Mr. Wright and asked him whether NBC would reconsider its decision to terminate KTGF(TV)'s affiliation. In response, Mr. Wright stated that "NBC has a long term relationship with Sunbelt, and I have a long-standing relationship with Jim Rogers, and there is no chance of changing the decision."

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 10, 2005.


Darnell Washington

CERTIFICATE OF SERVICE

I, Angela C. Spencer, do hereby certify that on this 10th day of June, 2005, a copy of the foregoing "Notice of Ex Parte Oral Presentations – Request for Expedited Declaratory Ruling (MB Docket No. 04-75)" was served by first class United States mail, postage prepaid, addressed to:

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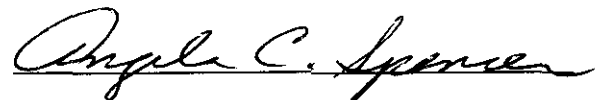
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